

vessel or aircraft that is not an American vessel (as defined in § 404.1004(b)(3)) or American aircraft (as defined in § 404.1004(b)(2)), your work is excluded from employment if—

(a) You are not a citizen of the United States or your employer is not an American employer (as defined in § 404.1004(b)(1)); and

(b) You are employed on and in connection with (as explained in § 404.1004(b)(7)) the vessel or aircraft when outside the United States.

§ 404.1038 Domestic employees under age 18.

Domestic services you perform in a private home of your employer are excluded from employment, regardless of the amount earned, in any year in which you are under age 18 if domestic service is not your principal occupation. The exclusion applies to the entire year if you are under age 18 in any part of the year. See § 404.1057.

[61 FR 38366, July 24, 1996]

**EXEMPTION FROM SOCIAL SECURITY BY
REASON OF RELIGIOUS BELIEF**

§ 404.1039 Employers (including partnerships) and employees who are both members of certain religious groups opposed to insurance.

(a) You and your employer (or, if the employer is a partnership, each of its partners) may file applications with the Internal Revenue Service for exemption from your respective shares of the Federal Insurance Contributions Act taxes on your wages paid by that employer if you and your employer (or, if the employer is a partnership, each of its partners)—

(1) Are members of a recognized religious sect or division of the sect; and

(2) Adhere to the tenets or teachings of the sect or division of the sect and for that reason are conscientiously opposed to receiving benefits from any private or public insurance that—

(i) Makes payment in the event of death, disability, old-age, or retirement; or

(ii) Makes payment for the cost of, or provides services for, medical care including the benefits of any insurance system established by the Act.

(b) Both your application and your employer's application (or, if your employer is a partnership, each partner's application) must be filed with and approved by the Internal Revenue Service pursuant to section 3127 of the Internal Revenue Code. An application must contain or be accompanied by the applicant's waiver of all benefits and payments under title II and part A of title XVIII of the Act. See § 404.305 for the effect of the filing of the waiver and the granting of the exemption.

(c) Regardless of whether the applicant meets all these conditions, the application will not be approved unless we find that—

(1) The sect or division of the sect has established tenets or teachings which cause the applicant to be conscientiously opposed to the types of insurance benefits described in paragraph (a)(2) of this section; and

(2) For a substantial period of time it has been the practice for members of the sect or division of the sect to make provision for their dependent members that is reasonable in view of their general level of living; and

(3) The sect or division of the sect has been in existence continuously since December 31, 1950.

(d) An application for exemption will be approved by the Internal Revenue Service only if no benefit or payment under title II or part A of title XVIII of the Act became payable (or, but for section 203 or section 222(b) of the Act, would have become payable) to the applicant at or before the time of the filing of the application for exemption.

(e) The tax exemption ceases to be effective with respect to wages paid beginning with the calendar quarter in which either the employer (or if the employer is a partnership, any of its partners) or the employee involved does not meet the requirements of paragraph (a) of this section or the religious sect or division of the sect is found by us to no longer meet the requirements of paragraph (c) of this section. If the tax exemption ceases to be effective, the waiver of the right to receive Social Security and Medicare Part A benefits will also no longer be effective. Benefits may be payable based upon the wages of the individual, whose exempt status was terminated,

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for and after the calendar year following the calendar year in which the event occurred upon which the cessation of the exemption is based. Benefits may be payable based upon the self-employment income of the individual whose exempt status was terminated for and after the taxable year in which the event occurred upon which the cessation of the exemption is based.

[58 FR 64889, Dec. 10, 1993]

WAGES

§ 404.1041 Wages.

(a) The term *wages* means remuneration paid to you as an employee for employment unless specifically excluded. Wages are counted in determining your entitlement to retirement, survivors', and disability insurance benefits.

(b) If you are paid wages, it is not important what they are called. Salaries, fees, bonuses and commissions on sales or on insurance premiums are wages if they are remuneration paid for employment.

(c) The way in which you are paid is unimportant. Wages may be paid on the basis of piecework or a percentage of the profits. Wages may be paid on an hourly, daily, weekly, monthly, or yearly basis. (See § 404.1056 for special rules for agricultural labor.)

(d) Your wages can be in any form. You can be paid in cash or something other than cash, for example, in goods or clothing. (See paragraphs (e) and (f) of this section for kinds of employment where cash payments alone are considered wages and § 404.1043(b) concerning the value of meals and lodging as wages.) If your employer pays you cash for your meals and lodging on a regular basis as part of your employment, these payments may be considered wages. Payments other than cash may be counted as wages on the basis of the fair value of the items when paid.

(e) In certain kinds of employment, cash payments alone count as wages. These types of employment are agricultural labor, domestic services, and services not in the course of the employer's trade or business.

(f) To count as wages, payments for services performed by home workers who are employees as described in

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§ 404.1008(d) must be in cash and must amount to \$100 or more in a calendar year. Once this cash pay test is met, all remuneration paid, whether in cash or kind, is also wages.

[45 FR 20075, Mar. 27, 1980, as amended at 55 FR 7309, Mar. 1, 1990]

§ 404.1042 Wages when paid and received.

(a) *In general.* Wages are received by an employee at the time they are paid by the employer to the employee. Wages are paid by an employer at the time that they are actually or constructively paid unless they are deemed to be paid later (as described in paragraph (c)(3) of this section).

(b) *Constructive payment.* Wages are constructively paid when they are credited to the account of, or set aside for, an employee so that they may be drawn upon by the employee at any time although not then actually received. To be a payment—

(1) The wages must be credited to or set aside for the employee and must be made available without restriction so that they may be drawn upon at any time; or

(2) The employer must intend to pay or to set aside or credit, and have the ability to pay wages when due to the employee, and failure of the employer to credit or set aside the wages is due to clerical error or mistake in the mechanics of payment, and because of the clerical error or mistake the wages are not actually available at that time.

(c) *Deemed payment.* (1) The first \$100 of cash paid, either actually or constructively, by an employer to an employee in a calendar year is considered paid at the time that the amount of the cash payment totals \$100 for the year in the case of pay for—

(i) Work not in the course of the employer's trade or business (non-business work);

(ii) Work by certain home workers; and

(iii) Work for an organization exempt from income tax under section 501 of the Code.

(2) We also apply this rule to domestic work in a private home of the employer, except see § 404.1057(a)(1) for the applicable dollar amount.